IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 302 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KESARBEN WD/O DALPATBHAI RAJABHAI HARIJAN

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 302 of 2003

MR HARSHIT S TOLIA for Petitioner No. 1

MS NANDINI JOSHI, APP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 11/02/2004

ORAL JUDGEMENT

Heard learned counsel appearing for the petitioner and learned APP Ms. Nandini Joshi appearing on behalf of respondent No.1.

2. This revision application is filed against the order passed by the learned Additional Sessions Judge, Rajkot dated 4.3.2003 in Misc. Criminal Application No. 130 of 2003. The application was preferred by the petitioner-widow of deceased Dalpathbhai Rajabhai Harijan, R/o of Kaliyar, District Bhavnagar for the custody of the muddamal articles at the termination of trial of Sessions Case No. 62 of 1998. The learned Additional Sessions Judge, Rajkot, by the judgement and order dated 19.10.2002, has convicted the two accused persons for the offences punishable under Section 302 IPC etc. and both the convicts have preferred appeal against the order of conviction and sentence being Criminal Appeal No. 1035 of 2002 which is pending before this Court. After lapse of reasonable period of time, from the date of order of conviction and appeal period in the month of March, 2003 the petitioner-widow applied for custody of muddamal articles as the same were recovered by Police during investigation from the body of the person deceased. Undisputedly, nobodyelse has claimed this muddamal. The learned Additional Sessions Judge has also not said in the order under challenge that the petitioner is not entitled to the muddamal articles but, it is observed while rejecting the application that an appeal is pending in the High Court against the order of conviction and therefore, the Court cannot pass order as to custody of muddamal. This finding is erroneous especially when, while disposing of the Sessions case, the learned Presiding Judge has held that the muddamal articles requires to be returned to the heirs of the deceased. Undisputedly, widow is the heir and nobodyelse has claimed the muddamal articles from the family of the person deceased. This order of disposal of muddamal passed by the learned Sessions Judge has not been challenged by the accused even in the memo as submitted by Mr. H.S.Tolia, the order of conviction has been challenged. It is rightly argued that the order passed by the learned Sessions Judge as to disposal of the muddamal is an order under Section 452 of the Code of Criminal Procedure and the same is made appealable independently under Section 454 of Cr.P.C. and there is no appeal under Section 454 by anybodyelse till date. The learned Sessions Judge ought to have directed the office to hand over the muddamal on proper identification of the petitioner. Pendency of appeal against conviction has no relevance.

3. It is pertinent to note that there is no resistance on merit by the State or by the convict accused persons otherwise they would have preferred

appeal under Section 454 of Cr.P.C. So, the revision application shall have to be allowed and therefore, allowed. The impugned order passed by learned Sessions Judge is hereby quashed and the learned Sessions Judge is directed to hand over the muddamal articles claimed by the petitioner-widow on proper identification at the earliest. However, in the interest of justice and by way of abundant caution, one condition requires to be imposed that the petitioner-widow should be asked to keep the muddamal articles as it is, for some reasonable period and, same is quantified as six months. Order accordingly. Rule is made absolute accordingly.

Direct service is permitted.

(C.K.Buch,J)

Jayanti*